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Inc., and Blue Cross and Blue Shield of Mississippi

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

ABC SERVICES GROUP, INC., a  
Delaware corporation, in its capacity as  
assignee for the benefit of creditors of  
MORNINGSIDE RECOVERY, LLC, a  
California limited liability company,

Plaintiff,

v.

HEALTH NET OF CALIFORNIA,  
INC.; HEALTH NET LIFE  
INSURANCE COMPANY; HEALTH  
NET, INC.; CENTENE  
CORPORATION; and DOES 1 through  
20, Inclusive,

Defendants,

and Consolidated Actions.

Lead Case No. 8:19-cv-00243-DOC-DFM  
and other Consolidated Cases

Consolidated Cases identified in Plaintiff's  
Response to Nov. 27, 2019 Minute Order  
[[ECF No. 150](#)] and Plaintiff's  
Supplemental Response to November 27,  
2019 Minute Order [[ECF No. 344](#)]

**STIPULATED QUALIFIED  
PROTECTIVE ORDER**

Courtroom: 9D  
Judge: Hon. David O. Carter

Lead Case Filed: February 6, 2019

1 The Parties to the above-captioned action and all consolidated actions (together,  
2 the “Action”) stipulate as follows:

3 1. PURPOSES AND LIMITATIONS

4 Discovery in this Action is likely to involve production of confidential, proprietary,  
5 or private information for which special protection from public disclosure and from use  
6 for any purpose other than pursuing this litigation may be warranted. Accordingly, the  
7 Parties stipulate to and petition the Court to enter this Stipulation and Qualified  
8 Protective Order (“Order”) so as to prohibit the Parties from using Protected Material (as  
9 defined below) for any purpose other than in connection with this Action.

10 Notwithstanding the foregoing, nothing in this Order shall be construed to prohibit a  
11 Producing Party (as defined below) from disclosing its own Protected Material to any  
12 person for any purpose. The Parties acknowledge that this Order does not confer blanket  
13 protections on all disclosures or responses to discovery and that the protection it affords  
14 from public disclosure and use extends only to the limited information or items that are  
15 entitled to confidential treatment under applicable legal principles.

16 2. GOOD CAUSE STATEMENT

17 The Parties acknowledge that information produced in discovery, regardless of its  
18 designation under this Order, may contain trade secrets, customer and pricing  
19 information, and other valuable research, development, commercial, financial, technical,  
20 and/or proprietary information for which special protection from public disclosure and  
21 from use for any purpose other than prosecution of this Action is warranted. Such  
22 confidential and proprietary materials and information consist of, among other things,  
23 confidential business or financial information, information regarding confidential  
24 business practices, competitively sensitive information regarding pricing and customers,  
25 or other confidential research, development, or commercial information (including  
26 information implicating privacy rights of third parties), information otherwise generally  
27 unavailable to the public, or which may be privileged or otherwise protected from  
28 disclosure by contract or under state or federal statutes, court rules, case decisions, or

1 common law.

2       The Parties further acknowledge that the information produced in discovery may  
3 contain personal and health information subject to the protections of, among other things,  
4 the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended  
5 by the Health Information Technology for Economic and Clinical Health Act (the  
6 “HITECH Act”), including all applicable regulations and guidance issued by the  
7 Secretary of the United States Department of Health and Human Services (collectively,  
8 the “HIPAA Rules”), including 42 C.F.R. Part 2 and 45 C.F.R. §§ 164.512(e)(1)(ii)(B),  
9 164.512(e)(1)(v), Substance Abuse and Mental Health Services Administration,  
10 including 42 U.S.C. § 290dd-2 (the “SAMHSA Rules”), California Health & Safety  
11 Code § 11845.5, and California Civil Code §§ 56 et seq. and 1798.82 et seq. (together  
12 with the HIPAA Rules and the SAMHSA Rules, the “Privacy and Security Rules”). This  
13 Order constitutes a Qualified Protective Order, as that term is defined in the Privacy and  
14 Security Rules, including 45 C.F.R. § 164.512(e)(1)(v). The Parties agree to take all  
15 measures necessary to comply with the requirements of the Privacy and Security Rules  
16 and any other applicable laws governing the privacy of personal and health information.  
17 Such measures include, but are not limited to, the development, implementation,  
18 maintenance, and use of appropriate administrative, technical, and physical safeguards,  
19 in compliance with the Privacy and Security Rules and applicable state and federal laws,  
20 to preserve the integrity, confidentiality, and availability of Protected Material (as  
21 defined below). The Parties expressly agree that the citations to the Privacy and Security  
22 Rules in this paragraph are for convenience only and that it remains the obligation of  
23 each Party to the Action to understand and comply with the obligations imposed by the  
24 Privacy and Security Rules and any other applicable state and federal law.

25       Notwithstanding the prior exchange between Plaintiff and certain of the  
26 Consolidated Defendants of documents and information, Consolidated Defendants have  
27 requested assurances from Plaintiff that the documents and information that may be  
28 produced in discovery relating to the patient claims and treatments at issue, and

specifically personal and health information contained therein, are not subject to the protections of 42 C.F.R. Part 2, including all applicable regulations and guidance (collectively “Part 2”) and California Health & Safety Code Section 11845.5. Plaintiff is informed and believes that Morningside Recovery LLC (“Morningside”) did not qualify as a provider subject to the disclosure restrictions and requirements under Part 2.<sup>1</sup> To the extent required, Plaintiff is informed and believes that Morningside complied with California Health & Safety Code Section 11845.5(b). As a result, the documents and information that may be produced in discovery relating to the patient claims and treatments at issue, and specifically personal and health information contained therein, are not subject to additional disclosure requirements of Part 2 and are permitted under California Health & Safety Code Section 11845.5(b). Notwithstanding the above, in the event that Plaintiff subsequently discovers that Morningside is subject to Part 2 and/or has not complied with California Health & Safety Code Section 11845.5(b), Plaintiff will notify the Parties and the Court and comply with the applicable and operative legal requirements thereunder.

Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the Parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

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<sup>1</sup> Those restrictions and requirements were amended by the Coronavirus Aid, Relief and Economic Security (CARES) Act (the “CARES Act”), as codified at 42 U.S.C. § 290dd-2 and the disclosure conditions thereunder.

3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

The Parties further acknowledge, as set forth in Section 15.3, below, that this Order does not entitle them to file confidential information under seal. Central District of California Local Civil Rule 79-5, as well as the standing orders of this Court, set forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the court to file material under seal.

Any document that is not confidential, privileged, or otherwise protectable in its entirety will not be filed under seal if the confidential portions can be redacted. If documents can be redacted, then a redacted version for public viewing, omitting only the confidential, privileged, or otherwise protectable portions of the document, must be filed. Any application that seeks to file documents under seal in their entirety should include an explanation of why redaction is not feasible.

4. DEFINITIONS

4.1 Action: the above-captioned action, *ABC Services Group, Inc. v. Health Net of California, Inc., et al.*, Case No. 8:19-cv-00243 DOC (DFMx), and all consolidated actions.

4.2 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

4.3 “CONFIDENTIAL” Information or Items: information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

4.4 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items: “CONFIDENTIAL Information or Items” of such a commercially or competitively sensitive nature that the disclosure to persons other than those listed in paragraph 9.3 would create a substantial risk of serious harm that could not be avoided by less restrictive means.

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1           4.5    “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”

2   Information or Items: “CONFIDENTIAL Information or Items” of such a commercially  
3   or competitively sensitive nature that the disclosure to persons other than those listed in  
4   paragraph 9.4 would create a substantial risk of serious harm that could not be avoided  
5   by less restrictive means.

6           4.6    Counsel: Outside Counsel of Record and House Counsel (as well as  
7   their support staff).

8           4.7    Designating Party: a Party or Non-Party that designates information or  
9   items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”,  
10   “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY  
11   CONFIDENTIAL – OUTSIDE COUNSEL ONLY”.

12          4.8    Disclosure or Discovery Material: all items or information, regardless  
13   of the medium or manner in which they are generated, stored, or maintained (including,  
14   among other things, testimony, transcripts, and tangible things), that are produced or  
15   generated in disclosures or responses to discovery.

16          4.9    Expert: a person with specialized knowledge or experience in a matter  
17   pertinent to the litigation who has been asked by a Party or its Counsel to serve as an  
18   expert witness or as a consultant in this Action.

19          4.10   House Counsel: attorneys who are employees of a party to this Action.  
20   House Counsel does not include Outside Counsel of Record or any other outside counsel.

21          4.11   Non-Party: any natural person, partnership, corporation, association, or other  
22   legal entity not named as a Party to this action.

23          4.12   Outside Counsel of Record: attorneys who are not employees of a Party to  
24   this Action but are retained to represent a Party to this Action and have appeared in this  
25   Action on behalf of that Party or are affiliated with a law firm that has appeared on  
26   behalf of that Party, including support staff.

27          4.13   Party or Parties: any party to this Action, including all of its officers,  
28   directors, employees, and Outside Counsel of Record (and their support staff).



1       4.14 Producing Party: a Party or Non-Party that produces Disclosure or  
2 Discovery Material in this Action.

3       4.15 Professional Vendors: persons or entities that provide litigation support  
4 services (e.g., photocopying, videotaping, translating, preparing exhibits or  
5 demonstrations, and organizing, storing, or retrieving data in any form or medium) and  
6 their employees and subcontractors.

7       4.16 Protected Health Information: The term “Protected Health Information”  
8 specifically includes “protected health information” as defined in HIPAA as well as  
9 “Medical Information” as defined by the California Confidentiality of Medical  
10 Information Act, Civ. Code § 56.05(j). “Protected Health Information” includes, but is  
11 not limited to, medical bills, claims forms, charge sheets, medical records, medical  
12 charts, test results, notes, dictation, invoices, itemized billing statements, remittance  
13 advice forms, explanations of benefits, audit letters, checks, notices, and requests.  
14 “Protected Health Information” also includes all notes, summaries, compilations,  
15 extracts, abstracts, or oral communications that contain, are based on, or are derived  
16 from “Protected Health Information.”

17       4.17 Protected Material: any Disclosure or Discovery Material that is designated  
18 as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”,  
19 or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.”

20       4.18 Receiving Party: a Party that receives Disclosure or Discovery Material  
21 from a Producing Party.

22       5. SCOPE

23       The protections conferred by this Order cover not only Protected Material, but  
24 also (1) any information copied or extracted from Protected Material; (2) all copies,  
25 excerpts, summaries, or compilations of Protected Material; and (3) any testimony,  
26 conversations, or presentations by Parties or their Counsel that is reasonably  
27 foreseeable to reveal Protected Material.

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Any use of Protected Material at trial will be governed by the orders of the trial judge and other applicable authorities. This Order does not govern the use of Protected Material at trial. Nothing in this Order shall restrict, broaden, or affect the admissibility of evidence in this Action.

6. DURATION

Even after final disposition of this Action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court Order otherwise directs.

7. DESIGNATING PROTECTED MATERIAL

7.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. The Designating Party must, to the extent practicable, designate for protection only those parts of material, documents, items, or communications that qualify so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, the Designating Party must promptly notify all other Parties that it is withdrawing the inapplicable designation.

7.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix, at a minimum, the legend "CONFIDENTIAL"



1 (“CONFIDENTIAL legend”), “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
2 ONLY” (“HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY legend”), or  
3 “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” (“HIGHLY  
4 CONFIDENTIAL – OUTSIDE COUNSEL ONLY legend”) to each page of the  
5 document containing Protected Material.

6 A Party or Non-Party that makes original documents available for inspection need  
7 not designate them for protection until after the inspecting Party has indicated which  
8 documents it would like copied and produced. During the inspection and before the  
9 designation, all of the material made available for inspection will be deemed  
10 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants  
11 copied and produced, the Producing Party must determine which documents, or portions  
12 of documents, qualify for protection under this Order. Then, before producing the  
13 specified documents, the Producing Party must affix the “CONFIDENTIAL legend”, the  
14 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY legend”, or the “HIGHLY  
15 CONFIDENTIAL – OUTSIDE COUNSEL ONLY legend” to each page of the document  
16 containing Protected Material.

17 (b) for deposition exhibits, portions of deposition testimony, or any  
18 video recording of a deposition proceeding, any Party or Non-Party may designate as  
19 Protected Material deposition exhibits or portions of deposition testimony by informing  
20 the reporter (and videographer, if applicable) during the deposition or by sending,  
21 within thirty (30) days after the reporter makes the final uncorrected deposition  
22 transcript available to all parties, a letter to all attorneys of record and to the deposition  
23 reporter (and videographer, if applicable) designating the exhibits to be so restricted,  
24 designating by page and line any portions of transcript to be so restricted, or the entire  
25 transcript if applicable, and specifying the level of protection being asserted. If all or a  
26 portion of a proceeding is videotaped, the video recording will have the same level of  
27 protection that is designated by a Party for the transcript of the proceeding.

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1 When deposition exhibits or deposition testimony are designated Protected  
2 Material by informing the reporter during the deposition, the transcript and any  
3 exhibits containing Protected Material shall have an obvious legend on the title page  
4 indicating that the transcript and exhibits contain Protected Material. If any portion of  
5 a videotaped proceeding is designated pursuant to this section, the videocassette,  
6 compact disc, or other video container shall be labeled with the appropriate  
7 confidentiality designation. The Designating Party shall inform the court reporter (and  
8 videographer, if applicable) of this requirement.

9 During the 30-day period, or a shorter period if agreed to by the Parties, following  
10 first availability of the final uncorrected deposition transcript, deposition exhibits, the  
11 deposition transcript, and/or the video recording will be designated "HIGHLY  
12 CONFIDENTIAL-OUTSIDE COUNSEL ONLY" in their entirety unless otherwise  
13 agreed. After the expiration of that period, the deposition exhibits, the deposition  
14 transcript, or the video recording shall be treated as actually designated. If no designation  
15 is made within the 30-day period, the materials shall be considered to not contain any  
16 Protected Material. A Party may challenge a designation of a deposition transcript,  
17 deposition exhibit, and/or video recording pursuant to the procedure set forth in  
18 Paragraph 8 herein. Documents previously marked as "CONFIDENTIAL", "HIGHLY  
19 CONFIDENTIAL – ATTORNEYS' EYES ONLY", or "HIGHLY CONFIDENTIAL –  
20 OUTSIDE COUNSEL ONLY" that are later used as deposition exhibits shall  
21 automatically retain those designations with no further required action by any Party.

22 Parties shall give the other parties notice if they reasonably expect a deposition,  
23 hearing, or other proceeding to include Protected Material so that the other parties can  
24 ensure that only individuals who are authorized to attend and who have signed the Non-  
25 Disclosure Agreement (Exhibit A) are present at those proceedings. The use of a  
26 document as an exhibit at a deposition shall not in any way affect its designation as  
27 "CONFIDENTIAL", "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY", or  
28 "HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY".

(c) for information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY”. If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, must identify the protected portion(s).

7.3 Inadvertent Failures to Designate. A document produced or disclosed without a “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” designation may be subsequently designated as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY.” In each such case, the Producing Party designating the document as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” shall provide to the other Party written notice of that designation and a copy of the document marked or identified under this paragraph. The disclosure by the Producing Party, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a claim of confidentiality, either on the specific information disclosed or on any other information relating thereto or on the same or related subject. A Party may challenge such a designation pursuant to the procedure set forth in Paragraph 8 herein.

## 8. CHALLENGING CONFIDENTIALITY DESIGNATIONS

8.1. Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court’s Scheduling Order.

8.2 Meet and Confer. The Challenging Party must initiate the dispute resolution process under Local Rule 37-1 *et seq.*

1           8.3   Joint Stipulation. Any challenge submitted to the Court must be through a  
2 joint stipulation under Local Rule 37-2.

3           8.4   The burden of persuasion in any challenge proceeding will be on the  
4 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to  
5 harass or impose unnecessary expenses and burdens on other Parties) may expose the  
6 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn  
7 the confidentiality designation, all parties must continue to afford the material in question  
8 the level of protection to which it is entitled under the Producing Party's designation until  
9 the Court rules on the challenge.

10   9.   ACCESS TO AND USE OF PROTECTED MATERIAL

11           9.1   Basic Principles. A Receiving Party may use Protected Material that is  
12 disclosed or produced by another Party or by a Non-Party in connection with this Action  
13 only for prosecuting, defending, or attempting to settle this Action. Such Protected  
14 Material may be disclosed only to the categories of persons and under the conditions  
15 described in this Order. When the Action has been terminated, a Receiving Party and all  
16 recipients of Protected Material must comply with the provisions of section 16 below  
17 (FINAL DISPOSITION).

18           Protected Material must be stored and maintained at a location and in a secure  
19 manner that ensures that access is limited to the persons authorized under this Order.

20           9.2   Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
21 ordered by the court or permitted in writing by the Designating Party, a Receiving  
22 Party may disclose any information or item designated "CONFIDENTIAL" only to:

23                   (a)   the Receiving Party's Outside Counsel of Record in this Action, as  
24 well as employees of said Outside Counsel of Record;

25                   (b)   the officers, directors, and employees, including House  
26 Counsel, of the Receiving Party;

27                   (c)   Experts (as defined in this Order) of the Receiving Party for this  
28 Action and who have signed the "Acknowledgment and Agreement to Be Bound"

(Exhibit A);

(d) the court and its personnel;

(e) court reporters, videographers, and their staff who are employed in the Action for the purpose of transcribing or recording depositions, hearings, or other proceedings in the Action who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or bona fide recipient of a document containing the information or a custodian or other person who is reasonably expected to possess knowledge of the information discussed in the document;

(h) during their depositions, deponents, and attorneys for deponents, in the Action to whom disclosure is reasonably necessary and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and must not be disclosed to anyone except as permitted under this Order; and

(i) mediators or settlement officers and their supporting personnel mutually agreed upon by any of the Parties engaged in settlement discussions pertaining to the Action who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A).

9.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

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1 (a) the Receiving Party's Outside Counsel of Record in this Action, as  
2 well as employees of said Outside Counsel of Record to whom it is reasonably necessary  
3 to disclose the information for this Action;

4 (b) House Counsel of the Receiving Party to whom disclosure is  
5 reasonably necessary for this Action;

6 (c) Experts (as defined in this Order) of the Receiving Party to whom  
7 disclosure is reasonably necessary for this Action and who have signed the  
8 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

9 (d) the court and its personnel;

10 (e) court reporters, videographers, and their staff who are employed in the  
11 Action for the purpose of transcribing or recording depositions, hearings, or other  
12 proceedings in the Action who have signed the "Acknowledgment and Agreement to Be  
13 Bound" (Exhibit A);

14 (f) professional jury or trial consultants, mock jurors, and Professional  
15 Vendors to whom disclosure is reasonably necessary for this Action and who have signed  
16 the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (g) the author or bona fide recipient of a document containing the  
18 information or a custodian or other person who is reasonably expected to possess  
19 knowledge of the information discussed in the document;

20 (h) during their depositions, deponents who are the author or bona fide  
21 recipient of a document containing the information or a custodian or other person who is  
22 reasonably expected to possess knowledge of the information discussed in the document,  
23 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
24 transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
25 must be separately bound by the court reporter and must not be disclosed to anyone  
26 except as permitted under this Order. The restrictions on the use of information or items  
27 designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" with a  
28 deponent do not apply to the use by a Designating Party of its own so-designated



1 materials during depositions of its directors, officers, employees or retained experts who  
2 are being deposed; and

3 (i) mediators or settlement officers and their supporting personnel  
4 mutually agreed upon by any of the Parties engaged in settlement discussions pertaining  
5 to the Action who have signed the “Acknowledgment and Agreement to Be Bound”  
6 (Exhibit A), to the extent use is expressly permitted by the Designating Party.

7 Notwithstanding this section, Plaintiff and the Designating Party may agree otherwise in  
8 writing to the extent such disclosure only applies to them.

9 9.4 Disclosure of “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL  
10 ONLY” Information or Items. Unless otherwise ordered by the court or permitted in  
11 writing by the Designating Party, a Receiving Party may disclose any information or item  
12 designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” only to:

13 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
14 well as employees of said Outside Counsel of Record to whom it is reasonably necessary  
15 to disclose the information for this Action;

16 (b) Experts (as defined in this Order) of the Receiving Party to whom  
17 disclosure is reasonably necessary for this Action and who have signed the  
18 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (c) the court and its personnel;

20 (d) court reporters, videographers, and their staff who are employed in the  
21 Action for the purpose of transcribing or recording depositions, hearings, or other  
22 proceedings in the Action who have signed the “Acknowledgment and Agreement to Be  
23 Bound” (Exhibit A);

24 (e) professional jury or trial consultants, mock jurors, and Professional  
25 Vendors to whom disclosure is reasonably necessary for this Action and who have signed  
26 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

27 (f) the author or bona fide recipient of a document containing the  
28 information or a custodian or other person who is reasonably expected to possess

1 knowledge of the information discussed in the document;

2 (g) during their depositions, deponents who are the author or bona fide  
3 recipient of a document containing the information or a custodian or other person who is  
4 reasonably expected to possess knowledge of the information discussed in the document,  
5 unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
6 transcribed deposition testimony or exhibits to depositions that reveal Protected Material  
7 must be separately bound by the court reporter and must not be disclosed to anyone  
8 except as permitted under this Order. The restrictions on the use of information or items  
9 designated “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” with a  
10 deponent do not apply to the use by a Designating Party of its own so-designated  
11 materials during depositions of its directors, officers, employees or retained experts who  
12 are being deposed; and

13 (h) mediators or settlement officers and their supporting personnel  
14 mutually agreed upon by any of the Parties engaged in settlement discussions pertaining  
15 to the Action who have signed the “Acknowledgment and Agreement to Be Bound”  
16 (Exhibit A), to the extent use is expressly permitted by the Designating Party.  
17 Notwithstanding this section, Plaintiff and the Designating Party may agree otherwise in  
18 writing to the extent such disclosure only applies to them.

19 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
20 OTHER LITIGATION

21 If a Party is served with a subpoena, a court order issued in other litigation, or  
22 request for information from a regulatory or enforcement agency that compels disclosure  
23 of any information or items designated in this Action as “CONFIDENTIAL”, “HIGHLY  
24 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL –  
25 OUTSIDE COUNSEL ONLY”, that Party must, unless prohibited by law:

26 (a) promptly notify in writing the Designating Party. The  
27 notification shall include a copy of the subpoena, court order, or request for  
28 information;

1 (b) promptly notify in writing the party who caused the subpoena, court  
2 order, or request for information to issue in the other litigation that some or all of the  
3 material covered by the subpoena, court order, or request for information is subject to this  
4 Order. The notification shall include a copy of this Order; and

5 (c) cooperate with respect to all reasonable procedures sought to be  
6 pursued by the Designating Party whose Protected Material may be affected. If the  
7 Designating Party timely seeks a protective order, the Party served with the subpoena,  
8 court order, or request for information may not produce any information designated in  
9 this action as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES  
10 ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL ONLY” before a  
11 determination by a court ordering disclosure of such information, unless the Party has  
12 obtained the Designating Party’s permission. The Designating Party will bear the burden  
13 and expense of seeking protection in that court of its confidential material and nothing in  
14 these provisions should be construed as authorizing or encouraging a Receiving Party in  
15 this Action to disobey a lawful directive from another court.

16 11. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
17 PRODUCED IN THIS LITIGATION

18 The terms of this Order are applicable to information produced by a Non-Party in  
19 this Action and designated as “CONFIDENTIAL”, “HIGHLY CONFIDENTIAL –  
20 ATTORNEYS’ EYES ONLY”, or “HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL  
21 ONLY”. Information produced by Non-Parties in connection with this litigation is  
22 protected by the remedies and relief provided by this Order. Nothing in these provisions  
23 should be construed as prohibiting a Non-Party from seeking additional protections.

24 (a) In the event that a Party is required, by a valid discovery request, to  
25 produce a Non-Party’s Protected Material in its possession, and the Party is subject to an  
26 agreement with the Non-Party not to produce the Non-Party’s confidential information,  
27 then the Party must:

28 ///

1 (1) promptly notify in writing the Requesting Party and  
2 the Non-Party that some or all of the information requested is subject to a  
3 confidentiality agreement with a Non-Party;

4 (2) promptly provide the Non-Party with a copy of this Order,  
5 the relevant discovery request(s), and a reasonably specific description of the  
6 information requested; and

7 (3) make the information requested available for inspection by  
8 the Non-Party, if requested.

9 (b) If the Non-Party fails to seek a protective order from this court within  
10 14 days of receiving the notice and accompanying information, the Receiving Party may  
11 produce the Non-Party's Protected Material responsive to the discovery request. If the  
12 Non-Party timely seeks a protective order, the Receiving Party may not produce any  
13 information in its possession or control that is subject to the confidentiality agreement  
14 with the Non-Party before a determination by the court. Absent a court order to the  
15 contrary, the Non-Party will bear the burden and expense of seeking protection in this  
16 court of its Protected Material.

17 12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

18 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed the  
19 Protected Material of another Designating Party to any person or in any circumstance not  
20 authorized under this Order, the Receiving Party must immediately (a) notify in writing  
21 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve or  
22 request destruction of all unauthorized copies of the Protected Material, (c) inform the  
23 person or persons to whom unauthorized disclosures were made of all the terms of this  
24 Order, and (d) request those person or persons to execute the "Acknowledgment an  
25 Agreement to Be Bound" attached as Exhibit A.

26 ///

27 ///

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13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

13.1 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material, or material inadvertently not designated as Protected Material, is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). Pursuant to Federal Rule of Evidence 502(d), neither the attorney-client privilege nor work product protection is waived by disclosure connected with this Action. Nothing herein shall be deemed to waive any privilege or work product protection. Additionally, nothing in this Order shall require production of documents, information, or other materials that a Party contends is protected from disclosure by the attorney-client privilege, the work product doctrine, or other privilege, doctrine, or immunity. If documents, information, or other materials subject to a claim of attorney-client privilege, work product doctrine, or other privilege, doctrine, or immunity is inadvertently or unintentionally produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any such privilege, doctrine, or immunity.

13.2 The inadvertent, unintentional, or in camera disclosure of Protected Material shall not be deemed a waiver in whole or in part of any Party's claims of confidentiality.

14. QUALIFIED HIPAA PROTECTIVE ORDER

14.1 The Parties are hereby granted the right to produce, to use, to exchange, and to obtain from any Party or health care provider, health plan, or other HIPAA-covered entity, or business associate of a covered entity, all information relating to the provision of health care or billing or payment for the provision of such health care for the medical claims at issue in the Action.

14.2 This Order authorizes any third party provided with an authorized request for the production of documents or deposition or trial attendance to disclose relevant

Protected Health Information in response to such request. This Order is intended to authorize such disclosures under the privacy regulations issued under HIPAA. *See* [45 C.F.R. § 164.512\(e\)\(1\)\(i\)](#).

14.3 The Parties are expressly prohibited from using or disclosing any Protected Health Information obtained under this Order for any purpose other than in relation to the Action.

#### 15. MISCELLANEOUS

15.1 Right to Further Relief. Nothing in this Order abridges the right of any Party to seek its modification by the Court through a regularly noticed motion. However, if all Parties agree to the proposed modification, the Parties can file a revised Order that incorporates the proposed modification.

15.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right to object to disclosing or producing or using in evidence any information or item on any ground not addressed in this Order.

15.3 Filing Protected Material. A Party seeking to file under seal any Protected Material must comply with Local Civil Rule 79-5. Protected Material may be filed under seal only pursuant to a court order authorizing the sealing of the specific Protected Material. If a Party's request to file Protected Material under seal is denied by the court, the Receiving Party may file the information in the public record unless otherwise instructed by the court.

15.4 Each person who signs Exhibit A voluntarily submits to the jurisdiction of the Court with respect to this Order.

15.5 There shall be no unauthorized disclosure outside of the Action of any Protected Material by any person authorized to have access under this Order.

15.6 This Order shall not be construed as, and does not constitute, a novation of any existing obligations of confidentiality a Party may owe another Party or otherwise by operation of law. To the extent they already exist, all such obligations remain in full force and effect notwithstanding this Order.



1           15.7 Review of the Protected Material by counsel, experts, or consultants for the  
2 Parties in the Action shall not waive the confidentiality of the documents or objections to  
3 production or discovery.

4           15.8 The Parties agree that the use and disclosure of certain Protected Health  
5 Information between the Parties can be performed in the ordinary course of business  
6 under HIPAA's regulatory provisions regarding uses and disclosures related to payment,  
7 treatment, or healthcare operations, including but not limited to 45 C.F.R. §§ 164.501,  
8 164.502, and 164.506.

9       16. FINAL DISPOSITION

10           After the final disposition of this Action, within 60 days of a written request by the  
11 Designating Party, all Protected Material must be returned to the Producing Party or  
12 destroyed or deleted. As used in this subdivision, "all Protected Material" includes all  
13 copies, abstracts, compilations, summaries, and any other format reproducing or  
14 capturing any of the Protected Material. Whether the Protected Material is returned or  
15 destroyed or deleted, the Receiving Party or recipient of Protected Material must submit a  
16 written certification to the Producing Party (and, if not the same person or entity, to the  
17 Designating Party) by the 60-day deadline that (1) identifies (by category, where  
18 appropriate) all the Protected Material that was returned, destroyed, or deleted and (2)  
19 affirms that the Receiving Party or recipient of Protected Material has not retained any  
20 copies, abstracts, compilations, summaries or any other format reproducing or capturing  
21 any of the Protected Material. Notwithstanding this provision, Counsel are entitled to  
22 retain an archival copy of all pleadings, motion papers, trial transcripts, deposition  
23 transcripts, hearing transcripts, legal memoranda, correspondence, deposition and trial  
24 exhibits, expert reports, attorney work product, and consultant and expert work product,  
25 even if the materials contain Protected Material. Any archival copies that contain or  
26 constitute Protected Material remain subject to this Order.

27 ///

28 ///

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2  
3 DATED: April 21, 2020

**GARNER HEALTH LAW  
CORPORATION**

4  
5 /s/ Craig B. Garner

6 Craig B. Garner  
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GROUP, INC.

8  
9 DATED: April 21, 2020

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15 ARKANSAS BLUE CROSS AND BLUE  
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16 ADMINISTRATORS OF ARKANSAS; BLUE  
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17 INC.; and BLUE CROSS AND BLUE  
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1 DATED: April 21, 2020

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CORPORATION; BLUE SHIELD OF  
CALIFORNIA LIFE & HEALTH  
INSURANCE COMPANY; CALIFORNIA  
PHYSICIANS' SERVICE DBA BLUE  
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AMERICA

14 DATED: April 21, 2020

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17 /s/ Ronald K. Alberts

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EMPLOYERS HEALTH PLAN OF  
GEORGIA, INC.; HUMANA HEALTH  
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HUMANA HEALTH PLAN OF TEXAS,  
INC.; AND HUMANA HEALTH PLAN, INC.

1 DATED: April 21, 2020

**FRANTZ WARD, LLP  
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10 DATED: April 21, 2020

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18 DATED: April 21, 2020

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1 DATED: April 21, 2020

**CALVO, FISHER & JACOB, LLP**

2  
3 /s/ Rodney J. Jacob

4 Rodney J. Jacob  
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HEALTHWORKS, INC.

6 DATED: April 21, 2020

**VON BEHREN & HUNTER LLP**

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8 /s/ Carol B. Lewis

9 William E. von Behren  
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12 DATED: April 21, 2020

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17  
18 DATED: April 21, 2020

**LEWIS BRISBOIS BISGAARD & SMITH**

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20 /s/ Joseph C. Campo

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HEALTH PLANS

23 DATED: April 21, 2020

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25 /s/ Gregory R. Merz

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1  
2 DATED: April 21, 2020

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6 Attorneys for Defendant PROVIDENCE  
7 HEALTH ASSURANCE

8 DATED: April 21, 2020

**COOPER & SCULLY, P.C.**

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14 WHITE HEALTH PLAN; SCOTT AND  
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15 DATED: April 21, 2020

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17 /s/ Bridget B. Vick

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1 DATED: April 21, 2020

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Elise D. Klein

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6 CORPORATION; MEDICA  
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8 FEDERAL SERVICES, INC.;  
9 VALUEOPTIONS OF CALIFORNIA, INC.;  
BEACON HEALTH STRATEGIES, LLC; and  
BEACON HEALTH OPTIONS,  
INC.

10 DATED: April 21, 2020

**CALL & JENSEN  
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13 /s/ Nilab Rahyar Tolton

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16 CLAIM

17 DATED: April 21, 2020

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20 /s/ Benjamin H. McCoy

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22 AND LIFE INSURANCE COMPANY;  
23 MERITAIN HEALTH, INC.; COVENTRY  
24 HEALTH CARE, INC.; MHNET SPECIALTY  
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GROUP CORPORATION

1 DATED: April 21, 2020

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3 /s/ Farah Tabibkhoei

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7 LEGAL RESERVE COMPANY, DOING  
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8 CROSS AND BLUE SHIELD OF  
OKLAHOMA; BLUE CROSS AND BLUE  
SHIELD OF KANSAS CITY; MOLINA  
9 HEALTHCARE, INC.; and MOLINA  
HEALTHCARE OF CALIFORNIA, INC.

11 DATED: April 21, 2020

**DOLL AMIR ELEY LLP**

13 /s/ Krista Hernandez

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15 Attorneys for Defendant AMERIHEALTH  
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17 DATED: April 21, 2020

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1 DATED: April 21, 2020

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11 RESOURCES, INC.; SIERRA HEALTH AND

12 LIFE INSURANCE COMPANY; and

13 GOLDEN RULE INSURANCE COMPANY

14 DATED: April 21, 2020

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15 /s/ Neil J. Barker

16 Neil J. Barker

17 Attorneys for Defendant BLUE CROSS

18 AND BLUE SHIELD OF ALABAMA

19 \* Pursuant to Local Rule 5-4.3.4.(a)(2)(i), the filing party attests that all other signatories  
20 listed above on whose behalf this filing is submitted concur in the filing's content and have  
21 authorized the filing.

22 **ORDER**

23 For good cause shown, the Court grants and enters the Stipulation and Qualified  
24 Protective Order.

25 IT IS SO ORDERED.

26 Dated: June 25, 2020

27 

28 JUDGE OF THE U. S. DISTRICT COURT

**EXHIBIT A**

**Acknowledgment and Agreement to Be Bound**

I affirm that I have read the Stipulation and Qualified Protective Order entered in *ABC Services Group, Inc. v. Health Net of California, Inc., et al.*, United States District Court, Central District of California, Case No. Case No. 8:19-cv-00243 DOC (DFMx), and all consolidated actions. I understand its terms and agree to be bound by them.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_